

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 6b

Date of Meeting November 2, 2010

DATE: October 25, 2010

TO: Tay Yoshitani, Chief Executive Officer

FROM: Kathy Bahnick, Seaport Environmental Programs Manager
Brick Spangler, Stormwater/Remediation Specialist

SUBJECT: Agreed Order with the Washington State Department of Ecology for
Environmental Investigations at Terminal 115 North.

Amount of This Request: \$1,000,000 (est.)

Source of Funds: Tax Levy

Est. Workers Employed: No Impact

ACTION REQUESTED:

Request Commission authorization for the Chief Executive Officer to execute an Agreed Order with the Washington State Department of Ecology (Ecology) for the completion of remediation investigation actions at Terminal 115 North (T115N) for an estimated cost of \$1,000,000.

SYNOPSIS:

In January 2009, Ecology informed the Port of its belief that T115N is sufficiently contaminated by hazardous substances from past practices that a cleanup at the site is necessary, and that the work should be conducted under Ecology supervision via an Agreed Order. In response, the Port completed an independent environmental investigation of T115N, which confirmed the presence of hazardous substances at the site. Ecology has proposed an Agreed Order that would require additional investigation and evaluation of site conditions, in order to provide a recommended cleanup action (if necessary) for T115N. Under this Order an interim remedial action could be necessary. If so, staff would return to obtain Commission authorization to procure a contractor to complete the required interim remedial action. Port staff has reviewed the terms of the Agreed Order and recommends signature.

Staff will return to Commission to obtain authorization to enter into a negotiated new Agreed Order or amended remedial investigation Agreed Order for the final cleanup action, if a cleanup action beyond interim remedial actions are required.

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BACKGROUND:

Terminal 115 is located along the Lower Duwamish Waterway (LDW), which is a listed federal and state Superfund site. The U.S. Environmental Protection Agency (EPA) is the lead agency for in-water (i.e., sediment) assessment and cleanup, while Ecology is the lead agency for source control for adjacent and upland sites to the LDW. Assessment activities conducted as part of the investigation of the LDW sediments have identified a number of localized contaminated areas. One of these areas of localized contaminated sediments, called Glacier Bay because of its proximity to the property owned by Glacier Northwest, is adjacent to and north of the northern portion of Terminal 115.

T115N was the site of a tin reclamation facility from approximately 1963 to 1998. The Port purchased the property in 1969 as part of the greater Terminal 115 development. The industrial operation utilized or generated a number of substances of environmental concern, including sodium hydroxide, spent plating solution, lacquer sludge and “black mud”.

On January 20, 2009, Ecology issued a “Notice of Potential Liability under the Model Toxics Control Act (MTCA) for the Release of Hazardous Substances and Notice of Intent to Conduct Site Hazard Assessment” for T115N. The purpose of the Notice was to provide the Port with the opportunity to comment on Ecology’s proposed findings. Ecology stated its belief that a release of hazardous substances had occurred at the site that posed a threat to human health or the environment, and that further action was necessary. Ecology proposed to find the Port liable as a potentially liable party (PLP) because it is the current owner of the property. Ecology’s proposed next steps were (1) initiate negotiations for an Agreed Order to further evaluate specific levels and areas of contamination; and (2) “clean the site up to standards.”

In its response, the Port acknowledged that it is nominally a PLP because it is the property owner and because there had been one sample that exceeded MTCA standards. However, the Port objected to Ecology’s determination that this was sufficient to find that the site posed a threat to human health or the environment.

Therefore, in November 2009, the Port conducted an independent environmental investigation at the T115N. The investigation identified the presence of contaminants of concern (specifically metals, semivolatile organic compounds and volatile organic compounds) at concentrations Ecology believes warrants further investigation under an Agreed Order.

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PROJECT SCOPE OF WORK AND SCHEDULE:

The scope of work that will be performed by a contracted consultant is defined by the Agreed Order negotiated by the Port and Ecology. Below is a list of the general scope of work expected to be completed in 36 to 42 months after signing of the Agreed Order.

- Prepare a Public Participation Plan and support the Port's public involvement effort.
- Prepare a Remedial Investigation/Feasibility Study (RI/FS) Work Plan.
- Perform the Remedial Investigation as defined in the Work Plan.
- Perform an Interim Remedial Action if required.
- Perform the Feasibility Study to determine the method of site remediation.
- Prepare a draft Cleanup Action Plan.

STRATEGIC OBJECTIVES:

This activity will further define potential threats to human health and the environment from contamination and will develop a plan to address those threats. These efforts are required to meet regulatory mandates, and manage Port liabilities. They fit squarely within the goals and objectives of the Seaport and Real Estate Division business plan as well as the Port's goals of environmental stewardship, as described further below.

BUSINESS PLAN OBJECTIVES:

Proceeding with this project ensures compliance and continued cooperation with Ecology and will allow productive use of the property in the future.

FINANCIAL IMPLICATIONS:

Cost Estimate

The estimated cost for consultant services for investigation and regulatory support work is highly variable, due to limited site data and the fact that the details of the RI/FS Work Plan will be negotiated after the Agreed Order has been signed. However, we estimate the costs of this work to be approximately \$1,000,000.

Source of Funds

A liability for these costs is expected to be booked and charged to expense in 2011. The cash expenditures, when incurred, will be funded by the Port's Tax Levy. This site was included in the Commission's 2010 environmental remediation spending authorization, approved on November 30, 2009. Additional liabilities may be booked as more site-specific information is generated and will be reported to the Commission via routine environmental liability reports and spending authorization requests.

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In addition, there are other possible supplementary outside sources that could be pursued, such as grant funding from Ecology, and cost sharing agreements with other PLPs. At this time it is not known if supplementary outside sources will be available for this site.

ENVIRONMENTAL SUSTAINABILITY/COMMUNITY BENEFITS:

Elimination of unacceptable levels of risk to human health and the environment caused by the presence of contaminants in soil, groundwater and sediment is not only required by state and federal law, but it is the hallmark of responsible environmental stewardship, from the perspectives of both the surrounding communities and the customers that we serve.

ALTERNATIVES CONSIDERED/RECOMMENDED ACTION:

- Do not enter into an Agreed Order but continue additional environmental investigation and possible cleanup work independently. If the Port decides not to enter into an Agreed Order, Ecology could impose a unilateral enforcement order issued under MTCA.
- Agree to enter into the Agreed Order. Port staff has reviewed the terms of the Agreed Order and although find them lacking sufficient detail to complete an accurate cost estimate still recommend them as acceptable. Staff believes that the Agreed Order's terms would provide more efficient and cost-effective cleanup procedures than would be imposed through a unilateral order. **This is the recommended alternative.**

OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

~~Map of Terminal 115 North.~~

Department of Ecology Agreed Order.

PREVIOUS COMMISSION ACTIONS:

On April 14, 2009, the Commission approved performing independent environmental investigation activities at Terminal 115N, and associated regulatory coordination.

On August 2, 2009, the Commission authorized the Chief Executive Officer to execute a Category 3 professional services contract for consultant support for environmental investigation and associated regulatory coordination at T115N ranging from approximately \$750,000 to \$1,000,000.